

**SOUTH CAROLINA DEPARTMENT OF ADMINISTRATION
OVERTIME/COMPENSATORY TIME POLICY AND PROCEDURE**

THE LANGUAGE USED IN THIS DOCUMENT DOES NOT CREATE AN EMPLOYMENT CONTRACT BETWEEN THE EMPLOYEE AND THE AGENCY. THIS DOCUMENT DOES NOT CREATE ANY CONTRACTUAL RIGHTS OR ENTITLEMENTS. THE AGENCY RESERVES THE RIGHT TO REVISE THE CONTENT OF THIS DOCUMENT, IN WHOLE OR IN PART. NO PROMISES OR ASSURANCES, WHETHER WRITTEN OR ORAL, WHICH ARE CONTRARY TO OR INCONSISTENT WITH THE TERMS OF THIS PARAGRAPH CREATE ANY CONTRACT OF EMPLOYMENT.

The Fair Labor Standards Act (FLSA) establishes minimum wage rates, maximum work hours, overtime pay requirements, equal pay standards, and child labor restrictions for employees subject to its provisions.

I. Policy

The use of overtime should be an exception to the regular work schedule in any work unit. All provisions in this policy are governed by principles established in the FLSA. By interpretation of the United States Department of Labor, the State is considered to be one employer for the purposes of applying FLSA. Employees, subject to overtime pay or compensatory time off under this policy, may not work overtime except in an emergency or when advance authorization has been given. Employees who violate this rule will receive overtime pay or compensatory time off for the overtime but may be subject to disciplinary action.

II. Non-exempt & Exempt Employees

Exemptions from both minimum wage and overtime pay requirements of the Fair Labor Standards Act are for any employee in a bona fide executive, administrative, professional or computer position. All other employees shall be non-exempt, and are therefore subject to the minimum wage, overtime and record-keeping requirements of the FLSA. The exempt/non-exempt status of any position is determined by the specific duties and salary of the position. The responsibility for determination of exempt or non-exempt rests with the Office of Administrative Services-Human Resources with input from the appropriate office/division management.

III. General Provisions

Compensation

Compensation of all employees is based on forty (40) hours per week or 2080 hours per year.

Workweek

The normal workweek for Department of Administration employees in a FTE position is 37.5 hours per workweek. Employees in some work units may be required to work 40 hours per workweek. However, employees shall not receive additional compensation or compensatory time for hours worked between 37.5 and 40 hours per workweek. Any employee may be required to work up to forty (40) hours per workweek without additional compensation.

For FLSA record keeping purposes, the standard workweek for employees begins at 12:01 a.m. Sunday and ends at 12:00 midnight on Saturday.

Hours Worked

Hours worked include all time that the employee is required to be on duty or at the prescribed workplace and all time during which the employee is permitted to work. This includes any bona fide work which the employee performs on or away from the premises if the supervisor knows or has reason to believe that the work is being performed.

Time off for holidays, paid leave, and compensatory time are not counted as hours worked when calculating overtime.

Overtime

All overtime must be pre-approved.

Overtime is all hours worked in excess of 40 in a seven consecutive day work period as defined by the Agency.

A non-exempt employee shall be paid no less than one and one-half (1 1/2) times his/her regular rate of pay for all hours worked over 40 in a workweek or granted compensatory time at a rate of one and one-half (1 1/2) hours for each hour of overtime worked.

Regular Rate of Pay

Regular rate of pay includes all remuneration for employment paid to an employee to include base pay, longevities, and shift differential.

Hourly Rate

The hourly rate is the "regular rate" for hourly employees. This rate is calculated by dividing the annual salary by 2080 hours. Hourly employees shall be compensated for all hours worked. Only salaried employees can be exempt. All employees compensated on a hourly rate basis must be classified as non-exempt.

Holidays

A non-exempt employee who is required to work on a legal holiday shall be given compensatory holiday leave credits in accordance with Section 19-708.04 of the State Human Resources Regulations; however, time worked on a legal holiday shall be used in computing total hours worked. Holiday compensatory time will be paid to the employee, if after 90 days of the holiday (unless extended by the Executive Director or designee in accordance with 19-708.04(D)), the employee has not taken the holiday compensatory time.

Overtime/Compensatory Time may not be Waived (off the record adjustment)

As a government agency, Department of Administration has and exercises the right to substitute compensatory time off in lieu of pay for occurrences of overtime. Any proposed exceptions, with justification, to this policy must be submitted through Office of Administrative Services-Human Resources.

The requirements that overtime pay must be paid or compensatory time granted to non-exempt employees after 40 hours of work in a workweek shall not be waived by agreement between the supervisor and the employee.

Compensatory Leave for Part-time Employees

Part-time employees may be granted compensatory leave instead of being paid for time worked over the employee's scheduled hours in a workweek. Compensatory leave is earned on an hour-for-hour basis. Non-exempt employees who work in excess of 40 hours in a workweek would earn compensatory time at a rate of one and one-half times any time worked over 40 hours in a work week.

Lunch/Meal Period

A bona fide meal period of thirty (30) minutes or more which occurs during the scheduled workday is not hours worked if the employee is completely relieved from duty for the purpose of eating a meal. Normally, the lunch period is one hour each workday. By flexible arrangement, an employee may be permitted to schedule a lunch period as short as 30 minutes.

Break Periods

Break periods of short duration must be counted as hours worked. For Department of Administration employees, when workloads permit, one morning and one afternoon break may be permitted for not longer than 15 minutes each. Breaks shall not be used to allow an employee to come in late, leave early or extend a lunch/meal period.

Adjusted Workweek

Under warranted circumstances, a non-exempt employee may be allowed to work in excess of the normal workday and may be given time off during the same workweek at the rate of an hour for an hour to avoid working over 40 hours in a workweek. This adjustment is not allowed for hours worked between 37.5 and 40.0 hours during any workweek. This type of work rescheduling precludes working more than 40.0 hours in a workweek and eliminates the need for overtime payment or compensatory time.

Shift Differential Pay

Shift differential pay is the additional amount of pay awarded to employees who are assigned to an evening, night or weekend, rotating, or split-shift. The Division of State Human Resources may approve the additional payment of a shift differential for classifications of employees in the entire agency or any portion of the agency, provided the majority of the shift must be outside the hours of 8:00 a.m. to 5:00 p.m., Monday through Friday.

On-Call

If an employee who is on-call is not confined to his home or any particular place but is required to only leave work where he can be reached, the hours spent are not regarded as work hours.

Call Back

Call back pay is pay for an employee to report to work either before or after normal duty hours to perform emergency services. Certain groups of employees are designated to receive call back pay. Non-exempt employees will be compensated for hours worked as a result of a call back at their regular rate plus any shift differential for which they may be eligible and such time shall be counted in computing overtime that may be due. When an employee is called back for emergency services which require less than two hours on the job, or when no work is available when he reports, the employee will be compensated a minimum of two hours.

Travel Time

The following guidelines apply to non-exempt employees:

- a. Ordinary home-to-work and work-to-home travel time is not work time.
- b. One-day assignment in another location:

All time spent traveling on one-day assignments is considered time worked regardless of time of day or day of the week.

The amount of work time for such trips will be based on the travel time from the employee's home to the destination place.

c. Travel that occurs within an employee's work day:

Time spent by an employee in travel as part of his principal activity, such as travel between job sites during the workday, must be counted as hours worked.

The time spent during the workday traveling between home and the workplace is not work time. In the case an employee does not report to the normal working base to begin the workday, the travel time that will be work time will be the travel time from home to the destination place.

If an employee is required to report at a meeting place to receive instructions, perform other work there, or to pick up and to carry tools, materials, equipment or other employees, the travel from the designated place to the actual workplace is part of the day's work and is work time.

d. Overnight assignment in another location:

Travel time away from home involving an overnight assignment for non-exempt employees is work time when it occurs during an employee's normal workday hours. This provision is applicable not only on regular working days but also during corresponding hours of non-working days.

Travel connected with an overnight assignment in another location occurring outside regular working hours need not be treated as work time in all situations.

If a non-exempt employee performs work related travel by driving or by operating a vehicle, the travel time is considered hours worked.

Lectures, Meetings, and Training Employees

When a non-exempt employee by reason of official responsibilities is required to attend lectures, meetings, training programs, etc., such time will be considered work time.

IV. Non-exempt Employees

- a. Non-exempt employees shall be compensated for all hours worked.
- b. Hourly employees are classified as non-exempt.
- c. All non-exempt employees must be paid not less than the current minimum wage.

- d. A record of hours worked by non-exempt employees must be maintained and kept on file for three years.
- e. Records of any accrued or used compensatory time must be kept for three years.
- f. Non-exempt employees may accumulate a maximum of 240 compensatory hours before cash payments must be made. Once an employee has accumulated more than the maximum creditable hours allowed, the office must payroll any additional authorized hours worked.

Office/division management is responsible for ensuring that employees do not accumulate in excess of the maximum allowable or certify that funds are available within the existing budgets to pay overtime in excess of the maximum allowed accumulation.

Compensatory time off will be given for any occurring overtime at a rate of one and one-half hours for each hour worked in excess of 40 in the workweek (overtime). For example, four hours of overtime will yield six hours of compensatory time.

- g. A non-exempt employee who is required to work on a legal holiday shall be given compensatory holiday leave credits in accordance with Section 19.708.04 of the State Human Resource Regulations; however, time worked on a legal holiday shall be used in computing total hours worked.
- h. Compensatory time off must be scheduled with the respective supervisor. However, an employee's request should be granted if made with reasonable advance notice and if work load permits. Additionally, the Agency may schedule employees to take compensatory time off.
- i. If a non-exempt employee accepts a position that is considered exempt either within the employee's own agency or with a separate state agency, compensatory time must be paid prior to the employee starting in the exempt position.
- j. If a non-exempt employee separates from employment or moves to another state agency as a non-exempt employee, any accrued compensatory time must be paid. Compensatory time must be paid at a rate of compensation not less than either the average regular rate received by the employee during the last three years of employment or the final regular rate received by the employee, whichever is higher.

V. Exempt Employees

- a. Although the FLSA does not require overtime compensation for exempt employees, compensatory time may be an option for approved circumstances.

- b. If granted, employees will earn one (1) hour of compensatory time for each hour in excess of 40.0 in the official work week.
- c. Compensatory time off may be scheduled only with supervisory approval. It is possible that an exempt employee will not be able to use all of their compensatory time.
- d. Upon separation of employment exempt employees will not be compensated for any unused compensatory time.
- e. Exempt employees required to work on a legal holiday shall be given compensatory holiday leave credits in accordance with State Human Resource Regulations Section 19.708.04.

VI. Temporary Employees

The hourly rate is the “regular rate” for temporary employees. This rate is calculated by dividing the annual salary by 2080 hours. Temporary employees shall be compensated for all hours worked. All temporary employees must be designated as non-exempt.